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26 **David Garza, Naser Alzer,**

27 **Margarita Hernandez, Kimberly Kennedy,**

28 **Amandeep Singh, Samah Haider**

and the class

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF CALIFORNIA

3 **David Garza, Naser Alzer, Kimberly ) Case No. 2:18-cv-01968-KJM-EFB**  
4 **Kennedy, Amandeep Singh, Samah )**  
5 **Haider, on behalf of themselves and of )**  
6 others similarly situated, )

7 Plaintiffs, )

8 v. )

9 **Confitech, Inc., a holding company )**  
10 **for Peoplefinders.com, Enformion, )**  
11 **Inc., and Advanced Background )**  
12 **Checks, )**

13 Defendants. )  
14 )

**AMENDED CLASS ACTION**  
**COMPLAINT**  
**JURY TRIAL DEMANDED**

15 1. Plaintiffs **David Garza, Naser Alzer, Kimberly Kennedy, Amandeep**  
16 **Singh, and Samah Haider** (hereinafter “Plaintiffs”), individually and on behalf of  
17 others similarly situated, brings this class action lawsuit against **Confitech, Inc.**  
18 and its subsidiaries **Peoplefinders.com, Enformion, Inc.,**  
19 **PublicRecordsNOW.com, and Advanced Background Checks** (collectively, all  
20 of these entities will be referred to as the “Defendants”).  
21

22  
23 I. PRELIMINARY STATEMENT

24 2. Plaintiffs **David Garza, Naser Alzer, Kimberly Kennedy, Amandeep**  
25 **Singh, and Samah Haider**, on behalf of themselves and all others similarly situated,  
26 complain of Defendants **Confitech, Inc.**, the parent or holding company, and its  
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1 following subsidiaries: Peoplefinders.com, Enformium, Inc., and Advanced  
2 Background Checks, Inc.

3  
4 3. This is a consumer class action that arises from the Defendants' willful  
5 publication and/or sale of consumers' expunged, expuncted and/or sealed criminal  
6 records in violation of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. (the  
7 "FCRA") and Texas Business and Commerce Code §§ 109.001–.007. Plaintiffs  
8 bring this action on behalf of consumers throughout the country who have been the  
9 subject of prejudicial, misleading and inaccurate background reports published  
10 and/or sold by the Defendants and anticipate adding other relevant state-law causes  
11 of action, similar to the Texas statute cited, as appropriate. The Defendants adopted  
12 and maintained a policy and practice of failing or refusing to timely update such  
13 consumers' criminal record histories to eliminate expunged, expuncted, or sealed  
14 cases, thus not accurately reflecting the final disposition.

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17  
18 4. Despite Defendants' sale of comprehensive background reports of the type  
19 that fall squarely within the purview of the FCRA, and despite aggressively  
20 marketing themselves – especially through Defendant Enformion – to each and  
21 every category of consumer that concerns the FCRA (i.e., insurance companies,  
22 collection agencies, real estate companies, and corporate human resource  
23 departments, just to name a few), Defendants unilaterally declare on their websites  
24 that the FCRA does not govern them as a matter of law. As a result, Defendants  
25 seek to wrongfully deprive American consumers of the many rights afforded to  
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1 them by the FCRA, including the right to obtain free copies of reports that  
2 Defendants sell about a consumer, the right to dispute inaccurate information, and  
3 the right to require that the Defendants only report information that adheres to the  
4 standard of maximum possible accuracy. Additionally, Defendants’ conduct  
5 negatively impacts commerce by improperly gaining a competitive edge over  
6 companies who go to the time and expense of complying with the law.  
7

## 8 **II. JURISDICTION AND VENUE**

9  
10 5. This Court has subject-matter jurisdiction under 15 U.S.C. § 1681p,  
11 which allows any FCRA claim to “be brought in any appropriate United States  
12 district court, without regard to the amount in controversy ....” Plaintiffs are  
13 bringing claims under the FCRA in this case.  
14

15  
16 6. This Court also has subject-matter jurisdiction under 28 U.S.C. § 1331,  
17 which gives federal district courts original jurisdiction of all civil actions arising  
18 under the Constitution, laws, or treaties of the United States. Plaintiffs are bringing  
19 claims under the FCRA in this case.  
20

21 7. This Court also has subject-matter jurisdiction under 28 U.S.C. § 1367  
22 for supplemental state-law claims. Plaintiffs also are bringing supplemental Texas  
23 statutory claims under TEX. BUS. & COM. CODE ANN. §§ 109.001–.007.  
24

25 8. This Court also has subject-matter jurisdiction under 28 U.S.C. § 1332(a)  
26 as there is complete diversity between the parties and the matter in controversy is  
27 more than \$75,000.  
28

1           9. This Court also has subject-matter jurisdiction under 28 U.S.C. §  
2 1332(d)(2) because this is a class action case where the matter in controversy,  
3 exclusive of interest and costs, exceeds \$5 million and a member of a class of  
4 plaintiffs is a citizen of a state different from any defendant.  
5

6           10. This Court has general-and specific-personal jurisdiction over the  
7 Defendants under California Code of Civil Procedure § 410.10 because they are  
8 residents of California,  
9

10           11. Venue lies properly in this district pursuant to 28 U.S.C. § 1391(b)  
11 as the Defendants all are from Sacramento, California.  
12

### 13                                   **III. PARTIES**

14           12. Plaintiff David Garza is an adult individual and citizen of the State  
15 of Texas who resides in Houston, Texas.  
16

17           13. Plaintiff Naser Alzer is an adult individual and citizen of the State of  
18 Texas who lives in Cedar Park, Texas.  
19

20           14. Plaintiff Kimberly Kennedy is an adult individual and citizen of the  
21 State of Texas who resides in Houston, Texas.  
22

23           15. Plaintiff Amandeep Singh is an adult individual and citizen of the  
24 State of Texas who lives in San Antonio, Texas.

25           16. Plaintiff Samah Haider is an adult individual and citizen of the State  
26 of Texas who lives in Houston, Texas.  
27  
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1           17. Defendant Confi-Chek, Inc. is a California corporation with its  
2 principal place of business in Sacramento, California. Defendant Confi-Chek, Inc.  
3 is the parent or holding company for the other named Defendants, and shares office  
4 space, customer service, personnel, data acquisition and management both with and  
5 across its named subsidiaries. As such, it provides or controls background  
6 screening services, decision-making intelligence, public record reports and  
7 operates as a consumer reporting agency. Defendant and its subsidiaries regularly  
8 conduct business in the State of Texas, and it operates a principal place of business  
9 at 1821 Q St. Sacramento, CA 95811-6718, an address shared by all the subsidiary  
10 Defendants as well. Defendant and its subsidiaries are a “consumer credit reporting  
11 agency,” as defined by 15 U.S.C. § 1681a(f), regularly engaged in the business of  
12 assembling, evaluating, and dispersing information concerning consumers for the  
13 purpose of furnishing “consumer reports,” as defined in 15 U.S.C. § 1681a(d), to  
14 third parties. Defendant Confi-Chek, Inc. can be served with process by serving its  
15 agent for the service of process Robert S. Miller at 1821 Q St. Sacramento, CA  
16 95811-6718, or wherever he may be found.

17  
18           18. Defendant Enformion, Inc. is a California corporation with its  
19 principal place of business in Sacramento, California. Defendant provides or  
20 controls background screening services, decision-making intelligence, public  
21 record reports and operates as a consumer reporting agency. Defendant regularly  
22 conduct business in the State of Texas, and it operates a principal place of business

1 at 1821 Q St. Sacramento, CA 95811-6718. Defendant is a “consumer credit  
2 reporting agency,” as defined by 15 U.S.C. § 1681a(f), and regularly engaged in  
3 the business of assembling, evaluating, and dispersing information concerning  
4 consumers for the purpose of furnishing “consumer reports,” as defined in 15  
5 U.S.C. § 1681a(d), to third parties. Defendant Enformion, Inc. can be served with  
6 process by serving its agent for the service of process Robert S. Miller at 1821 Q  
7 St. Sacramento, CA 95811-6718, or wherever he may be found.  
8

9  
10 19. Defendants Peoplefinders.com, Enformion, Inc., and Advanced  
11 Background Checks are subsidiary business entities that act as alter egos for Confi-  
12 Chek, Inc., and each other, as described above, and they provide background  
13 screening services, decision-making intelligence, public record reports and operate  
14 as consumer reporting agencies. These subsidiary Defendants all operate a principal  
15 place of business at 1821 Q Street Sacramento, CA 95811-6718. The Defendants  
16 are “consumer credit reporting agency,” as defined by 15 U.S.C. § 1681a(f) of the  
17 Act, regularly engaged in the business of assembling, evaluating, and dispersing  
18 information concerning consumers for the purpose of furnishing “consumer  
19 reports,” as defined in § 1681a(d) of the Act, to third parties. Defendants  
20 Peoplefinders.com and Advanced Background Checks, can be served with process  
21 by serving Confi-Chek, Inc.’s agent for the service of process Robert S. Miller at  
22 1821 Q St. Sacramento, CA 95811-6718, or wherever he may be found.  
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20. Subject to permission by the Court, Plaintiffs reserve the right to amend this Complaint to include any additional subsidiaries or affiliates uncovered during discovery in this case, which appears likely, given the Plaintiffs' pre-filing difficulty in mapping out the Defendants ownership structure, much less ascertaining whomever else may have purchased, subscribed to, or been given the Confi-Chek, Inc., inaccurate database as their source of background information.<sup>1</sup>

#### IV. FACTUAL ALLEGATIONS

21. About one in three Americans has a criminal record of some kind. Eighty-seven percent of employers, 80 percent of landlords, and 66 percent of colleges screen for criminal records. Background checking has become an intractable barrier to the fundamental needs of life for huge numbers of people with criminal records and has become a significant cause of poverty in this country, a phenomenon known as collateral consequences.

<sup>1</sup> For instance, Defendants Veromi.net, PublicRecordsNOW.com, PrivateEye.com, who appeared in Plaintiffs' Original Complaint have been dropped after repeated representations from opposing counsel and an affidavit from parent-Defendant, Confi-Chek, Inc., that no corporate affiliation, past or present, with the named Defendants and these entities exists, and that these former Defendants have never used Confi-Chek's data as a "white-label" product or service. As all three dropped Defendants surprisingly listed, as of the date of initial filing, Confi-Chek's corporate headquarters as their privacy contact location in their respective online Privacy Policies, Plaintiffs certainly reserve the right to amend should discovery show such relationships did indeed exist (in fact, after suit was filed, two of the three companies removed Confi-Chek's name from said Privacy Policies).



1           22.       To alleviate this burden, most states expanded their expungement or  
2 sealing laws between 2009 and the present. For instance, Texas passed its own such  
3 protective provisions in 2013, which is today codified in Texas Business and  
4 Commerce Code §§ 109.001–.007. These state laws, of course, provide additional  
5 remedies and protections to those found in the federal Fair Credit Reporting Act  
6 (15 U.S.C. § 1681 et seq), which has long forbidden the publication and reporting  
7 of expunged or sealed records. Despite the efforts of Congress and various state  
8 legislatures, however, the commercial screening industry’s continued publication  
9 and reporting of expunged cases threatens to undermine the whole strategy of  
10 broadening expungement as a remedy for the harm of collateral consequences.

14           23.       Moreover, the proliferation of background check companies,  
15 numbering in the hundreds and all charging subscription or access fees, creates  
16 insurmountable logistical and financial obstacles to anyone wanting to insure his  
17 or her expunged criminal record was, in fact, removed from publication by the  
18 universe of online businesses operating in this field. First, someone would need to  
19 locate every reporting site, which is practically impossible and, second, pay to join  
20 every site and then negotiate the removal of any wrongful publication of expunged  
21 or sealed records found, on a site-by-site basis. More difficult still, a number of  
22 background reporting companies, such as the Defendants in this case, employ  
23 multiple online “storefronts,” each branded with a different name but all using the  
24 same employees and database. By this method, they attempt to confuse clients and  
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1 avoid any and all regulation by disclaiming that they are governed by the FCRA at  
2 all. Needless to say, but the only reason not to operate openly as a legitimate,  
3 regulated background reporting company is to save the expense and effort required  
4 to provide accurate and legally permissible background information. As a result of  
5 this “Wild West” situation in the background screening industry, expunged records  
6 can be, and are, available for anyone to view for months or even years while,  
7 simultaneously, remaining unknown and undiscoverable to the individuals reported  
8 upon.  
9

10  
11  
12 ***A. The Defendants Practice as a Consumer Reporting Agency and Furnisher***  
13 ***of Consumer Reports for Employment Purposes.***

14 24. The Defendants operate background investigation websites that allow  
15 users to search for consumers based on several categories, including name, date of  
16 birth, and state of residence. Such reports may contain numerous items of  
17 information, including but not limited to age, employer, current and previous  
18 addresses, phone numbers, email addresses, arrest and conviction records, the  
19 identity of relatives, property records, marriage and divorce records, social media  
20 accounts, and lawsuit records.  
21

22  
23 25. The Defendants allow consumers nationwide to request, for a fee, a  
24 background report on virtually any person in the United States. In response to a  
25 request, the Defendants obtain information from various sources and assemble it  
26 into detailed reports they provide to users. These reports contain private, sensitive  
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1 and often erroneous data, including but not limited to residential history, birth dates,  
2 criminal records, tax records, DMV records, professional license records, civil  
3 suits, and social media information.  
4

5 26. The Defendants maintain inadequate policy or procedures to insure  
6 they accurately assemble and provide consumer reports in compliance with the  
7 FCRA, especially in the matter of eliminating expunged, expuncted, or sealed  
8 criminal records from their websites and reports.  
9

10 27. All of the Defendants' terms of service pages expressly disclaim any  
11 and all responsibility for inaccuracies in their respective data bases and reports,  
12 including criminal records, by purporting to foist this duty on the government  
13 agencies and third-party data providers who create or provide this information to  
14 the Defendants.  
15  
16

17 28. Instead, the Defendants seek to shield their non-compliant reporting  
18 behind a self-serving claim that none of them are consumer reporting agencies, that  
19 they do not sell consumer reports, and that they are not subject to the FCRA.  
20

21 29. But what the Defendants really provide is highly sensitive personal,  
22 legal and financial information regarding individuals. The information is the same  
23 information that is provided in consumer reports by recognized consumer reporting  
24 agencies and the information in the Defendants' reports are compiled using the  
25 same data sources as the major consumer reporting agencies reports.  
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1           30.       Moreover, the Defendants’ customers are in no way prevented from  
2 using these reports for the same purposes as users of other consumer reports — to  
3 make decisions regarding employment, housing, and credit worthiness, among  
4 other things. Worse still, Defendants have created a situation where FCRA  
5 violations inevitably occur.  
6

7  
8           31.       Confi-Chek, Inc., through Enformion and the other subsidiaries who  
9 directly link to Enformion, unabashedly markets its background reports to the very  
10 industries of greatest concern to the FCRA. Enformion’s home page includes as its  
11 first drop-down menu “Industries” that when clicked includes a who’s who of  
12 FCRA governed actors: “Collections, Government, Legal Professionals, Licensed  
13 Investigators, Corporate, Healthcare, Insurance, Law Enforcement, and Real  
14 Estate.”  
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17           32.       For the reasons above, and at all times pertinent hereto, the  
18 Defendants were consumer reporting agencies (“CRA”), defined by section  
19 1681a(f) of the FCRA as follows: “The term “consumer reporting agency” means  
20 any person which, for monetary fees, dues, or on a cooperative nonprofit basis,  
21 regularly engages in whole or in part in the practice of assembling or evaluating  
22 consumer credit information or other information on consumers for the purpose of  
23 furnishing consumer reports to third parties, and which uses any means or facility  
24 of interstate commerce for the purpose of preparing or furnishing consumer.”  
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1        33.        The Defendants obtain distilled and incomplete public record  
2 information, including criminal record history, from third party databases and  
3 courthouses and maintain such data in consumer files that they create and assemble.  
4 As a CRA, the Defendants are also required to follow reasonable procedures to  
5 assure maximum possible accuracy of the information concerning the individual  
6 about whom the report relates, per 15 U.S.C. § 1681e(b).  
7

8        34.        The Defendants do not, however, maintain strict procedures designed  
9 to ensure that such information is complete and up to date, nor do they utilize  
10 reasonable procedures designed to assure maximum possible accuracy. Based upon  
11 a common policy and practice, the Defendants regularly and illegally publish and  
12 report criminal records that have been expunged, expuncted or sealed by court  
13 order.  
14

15        35.        For example, the three named Class Representatives come from a  
16 group of over a dozen Texas clients of a single expungement service alone. In each  
17 case, Defendants' published database included expunged or expuncted criminal  
18 records many months past the date that Defendants were provided legal notice to  
19 remove the impermissible and inaccurate information. It seems inevitable that there  
20 will be hundreds if not thousands more whose rights were similarly ignored.  
21

22        36.        The Defendants' practices not only violate the FCRA as a matter of  
23 law, the practices exact serious consequences on consumer job applicants and  
24 interstate commerce. Consumers who have attempted to obtain the deletion of  
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1 negative background history are prejudiced in their ability to adequately determine  
2 whether the information is being accurately published or reported.

3  
4 37. Despite their duties to maintain strict procedures to assure that  
5 criminal record information is complete and up to date, and to utilize procedures  
6 designed to assure maximum possible accuracy of the criminal record information  
7 that they publish and/or sell to the public, the Defendants have nonetheless  
8 deliberately, willfully, intentionally, recklessly and negligently adopted a policy  
9 and practice that disregards these duties, in violation of the FCRA.  
10

11  
12 38. Finally, Defendants also fail to provide notice to consumers at the  
13 time they sell reports as required by the FCRA. They do not provide consumers  
14 with a disclosure of all the information in their files that pertains to the consumer  
15 or the sources of this information upon request, as required by the FCRA. They do  
16 not provide consumers with a free annual disclosure under the FCRA, which shall  
17 consist of “all information in the consumers file at the time of the request.” Quite  
18 the opposite is true: Defendants willfully violate the FCRA by making  
19 misrepresentations to convince consumers who visit their site or contact them that  
20 they do not sell consumer reports and are not governed or regulated by the FCRA  
21 as a consumer reporting agency or in any other respect.  
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25 39. Defendants seek to avoid their FCRA obligations to gain a  
26 competitive advantage over reputable consumer reporting agencies who go to the  
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1 time and expense of complying with the law, which directly impacts interstate  
2 commerce.

3  
4 **B. *The Defendants Published Criminal Records Under Texas Law***

5 40. Based on the same facts that triggered the FCRA compliance  
6 requirements above, the Defendants also fall squarely within the ambit of Chapter  
7 109 of the Texas Business and Commerce Code.

8  
9 41. In Texas, when an order of expunction is final, “the release,  
10 maintenance, dissemination, or use of the expunged records for any purpose is  
11 prohibited,” and “the person arrested may deny the occurrence of the arrest and the  
12 existence of the expunction order.” TEX. CODE CRIM. PROC. art. 55.03.

13  
14 42. Chapter 109 of the Texas Business and Commerce Code governs  
15 business entities that are engaged in publication of certain criminal record  
16 information. Tex. Bus. & Comm. Code §§ 109.001–.007. Chapter 109 applies to a  
17 business entity that “publishes” criminal record information and that charges “a fee  
18 or other consideration to correct or modify criminal record information.” TEX. BUS.  
19 & COMM. CODE § 109.002(a)(1).

20  
21  
22 43. By posting the information on their websites, the Defendants made  
23 Plaintiffs’ criminal record information available for inspection by anyone with  
24 access to the website; thus, “publishing” such records under Texas law, which  
25 defines “publishing” very broadly, requiring only that a background investigation  
26 website or company “communicate or make information available to another  
27  
28

1 person in writing or by means of telecommunications and includes communicating  
2 information on a computer bulletin board or similar system.” TEX. BUS. & COMM.  
3 CODE § 109.001(4).  
4

5 44. By charging, for example, \$29.95 for a single report or \$19.95 per  
6 month for a subscription (and these prices vary between the Defendants depending  
7 on special offers, etc.) — and by making these fees or consideration mandatory for  
8 anyone wanting to access their own personal criminal records as part of the  
9 correction or modification process — the Defendants charge “a fee or other  
10 consideration to correct or modify criminal record information” under Texas law.  
11  
12

13 45. Moreover, the Defendants’ websites all contain a trap that ironically  
14 also constitutes “other consideration” under the law. Before anyone may pay for  
15 and create an account with the Defendants to ascertain whether or not their  
16 expunged or sealed records are being unlawfully published, they must agree to  
17 waive any right to pursue a trial by jury or class action. Foregoing these valuable  
18 rights also constitutes a form of consideration in this case.  
19  
20

21 46. Next, a business entity may not publish criminal records if it has  
22 knowledge or has received notice that an order of expunction has been issued under  
23 article 55.03 Texas Code of Criminal Procedure. The Defendants received notice  
24 of expunction for each Plaintiff from both the Texas Department of Public Safety  
25 and from Plaintiffs themselves.  
26  
27  
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1        47.        A business entity that publishes information in violation of section  
2        109.005 is liable to the individual who is the subject of the information in an amount  
3        not to exceed \$500 for each separate violation, and in the case of a continuing  
4        violation, an amount not to exceed \$500 for each subsequent day on which the  
5        violation occurs. An individual who prevails in an action under section 109.005 is  
6        also entitled to recover court costs and reasonable attorney's fees. TEX. BUS. &  
7        COMM. CODE § 109.005(d).  
8

9  
10        **C.    *The Experience Of Representative Plaintiffs***  
11

12        48.        The Representative Plaintiffs share nearly identical underlying  
13        damages in this case. Much like the vast majority of Americans employ a criminal  
14        defense attorney to handle an expungement, for approximately \$500 each, Plaintiffs  
15        all hired the same online expungement assistance service to expunge certain  
16        criminal records related to past offenses qualifying for expungement or sealing  
17        under Texas law. In each case, Plaintiffs — much like anyone nationwide seeking  
18        to expunge, expunct, or seal criminal records in an American court or tribunal —  
19        also paid several hundred dollars in court costs, fees, and related expenses to  
20        successfully expunge or seal their records and received an Expungement Order  
21        from state court.  
22

23  
24        49.        Similarly, Plaintiffs all paid an additional \$100 to personally notify  
25        the universe of background check companies, including Defendants, that they must  
26        remove the expunged, expuncted or sealed records from their database. In other  
27         
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1 words, all Plaintiffs suffered similar, if not identical, economic damages when the  
2 Defendants both deprived them of the benefit of what they paid to obtain and what  
3 they paid to make sure the Defendants were aware of their duty under law.  
4

5 50. Next, copies of the Plaintiffs' Expungement Orders were served on  
6 appropriate state agencies and law enforcement offices who promptly removed and  
7 expunged all records and related files from state-run databases. These expunged  
8 Texas criminal charges were eliminated from the Texas Department of Public  
9 Safety database that was provided to bulk purchasers, including the Defendants.  
10

11 51. According to the Texas DPS website, the Defendants have not  
12 purchased a new criminal history database since September 6, 2010, although they  
13 continue to pay to receive the monthly files containing all of the expunction and  
14 nondisclosures granted each month in Texas. By regularly purchasing this database  
15 a company can ensure they stay in compliance because the Texas DPS removes all  
16 criminal records that have been sealed or expunged when providing the criminal  
17 records database. Almost all other background reporting company on the Texas  
18 DPS purchaser list bought updated data sets in 2018 and none are anywhere near  
19 eight years out-of-date, like the Defendants.  
20

21 52. Moreover, Texas DPS records show that the Defendants did receive  
22 proper notice from Texas DPS that Plaintiffs' relevant criminal records had been  
23 expunged and requiring the Defendants to cease any and all publication of those  
24 records.  
25  
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1           53.       Likewise, Plaintiffs, through their expungement assistance service,  
2 provided proper notice to over a hundred commercial background reporting  
3 services, including the Defendants. The online mailing service used on behalf of  
4 Plaintiffs shows receipt of this notice by one or more of the Defendants.  
5

6           54.       Despite the repeated efforts of both the Plaintiffs and the State of  
7 Texas, however, the expunged criminal records for each and every Plaintiff, and  
8 approximately a dozen other clients of expungement service, continue to be  
9 published and available to the public on the Defendants' websites, at least as of the  
10 filing date for this Original Complaint. Evidence of these violations was gathered  
11 independently of the Plaintiffs and other clients by their third-party expungement  
12 service provider who had become concerned that Defendants were simply ignoring  
13 the legal notices they received. This third-party simply subscribed to the  
14 Defendants' website and reviewed its clients' published reports for a fee.  
15  
16  
17

18           55.       As for the removal from public view of the expunged charges from  
19 state-run databases, any preparer of a background check that maintained strict  
20 procedures designed to insure complete and up to date information would have been  
21 aware that it was no longer appropriate to report the expunged charges. Frankly,  
22 even a preparer using less than strict procedures would have caught these  
23 publication and reporting problems, but the Defendants clearly were not and are  
24 not even doing minimal verification or record cleanup.  
25  
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1           56.       Thus, the Defendants published and possibly reported Plaintiffs'  
2 expunged criminal records long after they had been hidden from public view and  
3 then eliminated from relevant state-run databases. Clearly, the Defendants failed or  
4 refused to search for updated public record information on Plaintiffs' expunged  
5 criminal charges or employ other best practices to avoid publication of erroneous  
6 consumer data.  
7

8  
9           57.       At all times pertinent hereto, the Defendants were acting by and  
10 through their agents, servants and/or employees who were acting within the course  
11 and scope of their agency or employment, and under the direct supervision and  
12 control of the Defendants herein.  
13

14           58.       At all times pertinent hereto, the conduct of the Defendants, as well  
15 as that of their agents, servants and/or employees, was intentional, willful, reckless,  
16 and in grossly negligent disregard for federal and state laws and the rights of the  
17 Plaintiffs herein. The Defendants knowingly carry out a business practice of  
18 publishing and reporting criminal record information that is not current or up to  
19 date, and without assuring that such information has not been expunged or had its  
20 status changed. There is no reading or interpretation of section 1681e(b) of the  
21 FCRA, Chapter 109 of the Texas Business and Commerce Code, or any provision  
22 for that matter, which would justify, sanction, excuse or condone such a practice.  
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## V. CLASS ACTION ALLEGATIONS

59. Plaintiffs bring this action individually and as a class action for the Defendants' violations of sections 1681(e)(b) of the FCRA and of Chapter 109 of the Texas Business and Commerce Code, pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure, on behalf of the following Classes:

**I. For all Defendants, except Enformion, the class should exclude any person who agreed to any Defendant's Terms and Conditions, such that they agreed to arbitrate disputes with the Defendants and/or waived future participation in any class action:**

i) **FCRA CLASS:** *All natural persons residing in the United States whose expunged, expuncted, or sealed criminal records were published after the Defendants received notice that they were so expunged, expuncted or sealed within 2 years of the filing of this complaint; and,*

ii) **TEXAS BUSINESS and COMMERCE CODE CLASS:** *All natural persons who received an expunction from a Texas court or whose criminal records were sealed by a Texas court and whose expunged, expuncted, or sealed criminal records were published after the Defendants received notice that they were so expunged, expuncted, or sealed within 4 years of the filing of this complaint.*

**II. For Defendant Enformion, only government or business entities may register on its website, so individual person cannot have agreed to**

1 arbitrate disputes with Enformion and/or waived the right to participate in  
2 the following classes:

3  
4 i) **FCRA CLASS:** *All natural persons residing in the United*  
5 *States whose expunged, expuncted, or sealed criminal records*  
6 *were published after the Defendants received notice that they*  
7 *were so expunged, expuncted or sealed within 2 years of the*  
8 *filing of this complaint; and,*

9 ii) **TEXAS BUSINESS and COMMERCE CODE CLASS:** *All*  
10 *natural persons who received an expunction from a Texas*  
11 *court or whose criminal records were sealed by a Texas court*  
12 *and whose expunged, expuncted, or sealed criminal records*  
13 *were published after the Defendants received notice that they*  
14 *were so expunged, expuncted, or sealed within 4 years of the*  
15 *filing of this complaint.*

16 60. Each Class is so numerous that joinder of all members is  
17 impracticable. Although the precise number of Class members is known only to the  
18 Defendants, Plaintiffs aver upon information and belief that each Class numbers in  
19 the thousands. The Defendants publish and sell standardized criminal history  
20 record information to thousands of individuals and businesses throughout the  
21 country.  
22

23  
24 61. There are questions of law and fact common to the Classes that  
25 predominate over any questions affecting only individual Class members. The  
26 principal questions include (a) whether the Defendants, by employing a policy and  
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1 practice of publishing and disclosing expunged criminal record histories, willfully  
2 and negligently violated FCRA section 1681e(b) by failing to follow reasonable  
3 procedures to assure maximum possible accuracy of the information concerning the  
4 individual about whom the report relates; and (b) whether the Defendants violated  
5 Chapter 109 of the Texas Business and Commerce Code for the same reasons.  
6

7  
8 62. Plaintiffs' claims are typical of the claims of each Class, which all  
9 arise from the same operative facts and are based on the same legal theories.

10 63. Plaintiffs will fairly and adequately protect the interests of each Class.  
11 Plaintiffs are committed to vigorously litigating this matter. Plaintiffs have secured  
12 counsel experienced in handling consumer class actions. Neither Plaintiffs nor their  
13 counsel have any interests which might cause them not to vigorously pursue this  
14 claim.  
15

16  
17 64. This action should be maintained as a class action because the  
18 prosecution of separate actions by individual members of the Classes would create  
19 a risk of inconsistent or varying adjudications with respect to individual members  
20 which would establish incompatible standards of conduct for the parties opposing  
21 the Classes, as well as a risk of adjudications with respect to individual members  
22 which would as a practical matter be dispositive of the interests of other members  
23 not parties to the adjudications or substantially impair or impede their ability to  
24 protect their interests.  
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65. A class action is a superior method for the fair and efficient adjudication of this controversy. The interest of Class members in individually controlling the prosecution of separate claims against Defendant is small as each cause of action is subject to a statutory damages cap and there is no reason to award different amounts per day among the Plaintiffs of those statutory damages that accrue daily. Management of the Class claims is likely to present significantly fewer difficulties than those presented in many individual claims. The identities of the Class members may be obtained from the Defendants' records.

## VI. CAUSES OF ACTION

**COUNT ONE – FCRA § 1681e(b)**

66. Plaintiffs incorporate the foregoing paragraphs as though the same were set forth at length herein.

67. Pursuant to sections 1681n and 1681o, each of the Defendants is liable for negligently and/or willfully violating the FCRA by failing to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom a consumer report relates, in violation of section 1681e(b).

68. As a result of Defendants' conduct Plaintiffs suffered actual damages in the form of out of pocket loss in the funds paid to complete the expungement, expunction, or sealing of criminal records process only to have Defendants continue to report obsolete and impermissible criminal information about them.



1           69.       Plaintiffs seek actual, statutory and punitive damages in addition to  
2 their costs and attorney fees pursuant to 15 U.S.C. §1681n.

3  
4           **COUNT TWO – TEX. BUS. & COM. CODE ANN. §§ 109.001–.007**

5           70.       Plaintiffs incorporate the foregoing paragraphs as though the same  
6 were set forth at length herein.

7  
8           71.       Pursuant to sections 109.001—.007, each of the Defendants are liable  
9 for failing to remove Plaintiffs’ expunged criminal records from their websites and  
10 reports after being provided notice.

11  
12           72.       The Plaintiffs are entitled to a penalty of up to \$500 for each separate  
13 violation. Each of the Defendants has engaged, and is engaging, in a continuing  
14 violation, so a separate penalty of up to \$500 per violation is owed for each day on  
15 which the violation occurred TEX. BUS. & COMM. CODE § 109.005(b).

16  
17           73.       The Plaintiffs are entitled to their attorneys’ fees and costs related to  
18 their claim for penalties under Texas Business and Commerce Code Chapter 109.  
19 TEX. BUS. & COMM. CODE § 109.005(d).

20  
21           **COUNT THREE - INJUNCTIVE RELIEF UNDER TEXAS LAW**

22           74.       Plaintiffs incorporate the foregoing paragraphs as though the same were  
23 set forth at length herein.

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25           75.       The Plaintiffs request that the Court enter a temporary and permanent  
26 injunction ordering the Defendants to comply with Texas Business and Commerce  
27 Code Chapter 109 by (1) immediately removing all information regarding any  
28

1 criminal record information related to the Plaintiffs or any class members that has  
2 been expunged by a Texas court from their databases, and (2) not publishing any  
3 criminal record information that has been expunged by a Texas court. TEX. BUS.  
4 & COMM. CODE § 109.005(c) (“In an action brought under this section, the court  
5 may grant injunctive relief to prevent or restrain a violation of this section.”).  
6

7  
8 76. The Plaintiffs are entitled to their attorneys’ fees and costs related to  
9 seeking and obtaining injunctive relief. TEX. BUS. & COMM. CODE § 109.005(d).  
10

## 11 **VII. JURY TRIAL DEMAND**

12 77. Plaintiffs demand trial by jury on all issues so triable.  
13

## 14 **VIII. PRAYER FOR RELIEF**

15 78. WHEREFORE, Plaintiffs seek relief against the Defendants as  
16 follows:

17 (a) That an order be entered certifying the proposed Classes under Rule 23 of  
18 the Federal Rules of Civil Procedure and appointing Plaintiffs and their counsel  
19 to represent the Classes;

20 (b) That judgment be entered against the Defendants for statutory damages in  
21 the amount of not less than \$100 and not more than \$1,000 per violation per  
22 Class member, pursuant to 15 U.S.C. § 1681n(a);

23 (c) That judgment be entered against the Defendants for punitive damages  
24 pursuant to 15 U.S.C. § 1681n(a)(2);

25 (d) That judgement be entered against the Defendants for statutory damages in  
26 the amount of not more than \$500 per violation per Class member and, in the  
27 case of a continuing violation, an amount not to exceed \$500 for each  
28 subsequent day on which such violation(s) occurred, pursuant to Chapter 109  
of the Texas Business and Commerce Code;

1 (e) That the Court enter a temporary injunction, and on final judgment a  
2 permanent injunction, prohibiting the Defendants from publishing criminal  
3 record information that has been expunged by a Texas court;

4 (f) That judgment be entered in favor of Plaintiffs for actual damages related to  
5 obtaining the expungement, expunction or sealing of criminal records;

6 (g) That the Court award costs and reasonable attorney's fees pursuant to 15  
7 U.S.C. §1681n and §1681o; and

8 (h) That the Court grant such other and further relief as may be just and proper.

9 Dated this 5<sup>th</sup> day of November, 2018.

10 Respectfully Submitted,

11 By: s/Thomas J. Lyons Jr.

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